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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Services Licensees)
)
Implementation of Section 257 of the)
Communications Act --)
Elimination of Market Entry Barriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WT Docket No. 96-148

GN Docket No. 96-113

COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

Bell Atlantic NYNEX Mobile, Inc. (BANM)¹ hereby submits its comments on the Commission's Further Notice of Proposed Rulemaking in this proceeding.² BANM strongly supports the adoption of rules which would (1) permit cellular licensees to disaggregate spectrum and (2) apply to the cellular service the same rules governing partitioning of geographic service areas which the Commission has recently adopted for Broadband PCS. These rules are in the public interest, and are legally required to ensure regulatory symmetry among competing providers of commercial mobile radio services.

¹Bell Atlantic NYNEX Mobile, Inc. is the managing general partner of Cellco Partnership, which holds or controls cellular radiotelephone licenses to provide service in more than 80 cellular markets throughout the United States.

²Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-148 and GN Docket No. 96-113, FCC 96-474, released December 20, 1997.

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In the Report and Order accompanying the Further Notice, the Commission adopted new rules applicable to providers of Broadband PCS which permit both "spectrum disaggregation" and "geographic partitioning." The Commission found that the flexibility provided by the new rules would facilitate the efficient use of spectrum, increase competition, and expedite the provision of new wireless offerings. The Further Notice seeks comment on whether these rules should be extended to the cellular service and other commercial mobile radio services.

Spectrum Disaggregation. The Report and Order permits PCS carriers to transfer a portion of their assigned frequency to other entities pursuant to the Commission's approval. Disaggregation serves important public interest goals by ensuring that there is a procedure for placing underutilized spectrum in the hands of parties which put the highest productive value on it.

The current rules for the cellular service do not, however, permit spectrum disaggregation. There can be no question that these rules should be changed to be consistent with the new PCS disaggregation rules. The findings which led the Commission to adopt disaggregation for PCS are equally applicable to the cellular service.³ In many markets, cellular carriers may not need to use on a continuous basis a portion of the 25 mhz of spectrum they are licensed to use. The amount of spectrum needed depends on fluctuating peak and off-peak traffic levels, the

³The Further Notice asks (at ¶ 95) "whether there are any technical or other constraints unique to the cellular service that would make disaggregation either impractical or administratively burdensome." BANM submits there are no such constraints.

technology used and the number of cell sites, among other factors. In addition, new digital technologies enable the same amount of traffic to be handled with less spectrum. As these technologies are deployed by cellular carriers, some spectrum may be available for other uses. Parties interested in providing niche or other specialized services which do not need a full block of spectrum can acquire the amount of spectrum they do need. This flexibility will also promote further CMRS competition, by encouraging new entry into provision of CMRS through the acquisition and use of cellular spectrum. In short, disaggregation will allow maximum, efficient use of cellular spectrum, enhance competition, and enable new services to be offered to consumers.

In addition, Congress's mandate of regulatory symmetry for similar mobile services requires extending the PCS spectrum disaggregation rules to the cellular service. Congress, in amending Section 332(c) of the Communications Act in 1993,⁴ directed the Commission to ensure that similar services be regulated consistently. This mandate was based on Congress's findings that disparate regulation can impair competition, interfere with the growth and development of CMRS, and distort market forces.⁵ The Commission, in implementing Section 332(c) as amended, has repeatedly held that Broadband PCS and cellular carriers are similar services which directly compete for subscribers, and thus should be

⁴Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993).

⁵H.R. Rep. 103-213, 103rd Cong., 1st Sess. 494 (1993); H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 259-60 (1993).

subject to the same regulatory regime.⁶ The Commission found in the Report and Order that the new disaggregation rules for PCS were in the public interest. Having made that finding, the Commission must now extend those new rules to the competitive cellular service. Conversely, providing this flexibility and opportunity to PCS carriers, while denying it to their competitors, e.g., cellular providers, would violate Section 332's direction.

Geographic Partitioning. While existing rules authorize cellular licensees to assign a portion of their licensed service area, the Report and Order adopts geographic partitioning rules for Broadband PCS which differ in numerous respects from the cellular rules. For example, the new rules provide PCS carriers with more flexibility as to ways in which partitioning is accomplished, and also with regard to the obligations that apply to the new licensee for the partitioned area. There is no rational basis for maintaining different rules for cellular carriers. To the contrary, as noted above, Section 332 and numerous Commission decisions require that Broadband PCS and cellular be regulated consistently. The Commission found in the Report and Order that the rules it was there adopting for partitioning of PCS markets were in the public interest. Having made that finding, the Commission must extend those new rules to the competitive cellular service.

⁶E.g., Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988 (1994).

BANM thus urges the Commission to conclude this proceeding promptly and extend the PCS disaggregation and partitioning rules to the cellular service.

Respectfully submitted,

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